



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cleveland Pneumatic Company

File: B-230316

Date: July 6, 1988

DIGEST

Failure of agency to provide previous subcontractor with copy of solicitation for items it supplied to prime contractor does not provide a basis for requiring agency to resolicit where agency did not deliberately exclude the firm from competition, it otherwise made reasonable efforts to publicize and distribute the solicitation, 11 proposals were received, and the subcontractor did not avail itself of every reasonable opportunity to obtain the solicitation after reading the synopsis of the procurement in the Commerce Business Daily.

DECISION

Cleveland Pneumatic Company protests the award of a contract to Pacific Aero Manufacturing under request for proposals No. F09603-87-R-7083 (RFP-7083), issued by the Warner Robins Air Logistics Center, Robins Air Force Base, Georgia, for F-15 aircraft wing skin components. Cleveland Pneumatic complains that, even though it has been the subcontractor providing these parts to the prime contractor for the F-15, the agency failed to provide it with a copy of the solicitation prior to the closing date for receipt of proposals, thereby preventing it from competing under the solicitation.

We deny the protest.

FACT FINDING CONFERENCE/BACKGROUND

On April 27, 1988, a fact-finding conference was convened, see Bid Protest Regulations, 4 C.F.R. § 21.5 (1988), to determine the circumstances behind the Air Force's failure to solicit Cleveland Pneumatic on this procurement. Based on the testimony given, we find that the record establishes the pertinent facts as discussed below.

Since the mid-1970's, Cleveland Pneumatic has been providing F-15 aircraft skin components to McDonnell-Douglas Corporation, the prime contractor for the F-15 aircraft. Conference Transcript (CT) at 18-20, 108-109, 198-199, 261. In 1986, as part of a program to break out spare parts and procure them on a competitive basis, the Air Force issued a competitive solicitation for an F-15 wing skin component for the right side of the aircraft, which is the component to be supplied under the protested contract. CT at 198-199. Cleveland Pneumatic was not solicited for the 1986 procurement; according to the agency buyer for that procurement, she was unaware of the firm until its representatives contacted her in March 1987 to express interest in competing for future procurements of F-15 wing skin components. CT at 202.

In early 1987, Cleveland Pneumatic contacted the buyer for the 1986 procurement and other Robins officials to express its interest in being solicited for future procurements of F-15 wing skin components and to advise contracting officials of its qualifications based upon its experience manufacturing these parts under a contract with McDonnell-Douglas. CT at 22-28, 202, 260. A May 6, 1987, letter from Cleveland Pneumatic was circulated throughout the Robins buying office indicating the firm's interest. CT at 31-33, 221-26.

By letter of June 2, Robins advised Cleveland Pneumatic that it had been certified as a potential source for F-15 wing skin components, and that the firm "should be solicited for future buys of these items" at the request of the Robins Competition Advocacy Source Development Office. Cleveland Pneumatic was entered on the Mechanized Bidders List, but pursuant to written policy of Robins this listing was effective only for a period of 90 days pending submission of a standard form (SF) 129 solicitation Mailing List Application. CT at 162, 170-72, 188-92. Cleveland Pneumatic proceeded to submit an SF 129 requesting placement on the bidders list under the entry for aircraft and airframe structural components; the form, however, had been pre-addressed to the activity responsible for buying routine supplies and services for the base, and not to the activity responsible for buying F-15 wing skins. Cleveland Pneumatic subsequently was dropped from the list, apparently at the end of September. CT at 158-62, 170-72, 188-92.

On September 14, RFP-7083 was synopsized in the Commerce Business Daily (CBD); the synopsis stated that the solicitation would be issued approximately September 30 and invited written requests for copies, warning that no telephone requests should be submitted. The buyer for the procurement did not use the Mechanized Bidders List when she

subsequently selected the firms to be solicited at the end of September because she had already compiled a list of 15 names using the abstract from the 1986 wing skin procurement, recommendations from the Robins small business office, and her knowledge of qualified sources. CT at 239-52. While the buyer had received an August proposal from Cleveland Pneumatic for an F-15 wing skin component, she did not remember that the firm was an interested supplier when she drew up the list of firms to be solicited. CT at 251. Cleveland Pneumatic thus was not on the list of firms to be solicited.

Cleveland Pneumatic saw the CBD synopsis, but did not submit a written request for a copy of the solicitation, and did not contact the person identified in the synopsis. CT at 104, 163-64. Instead, in late September, a sales representative of the firm telephoned the buyer for the 1986 procurement of the same part to inquire about this new RFP; according to the sales representative, he was advised that the firm would receive all solicitations for F-15 wing skin components as a result of being certified a potential source and being entered onto the Mechanized Bidders List. CT at 64-65, 101-02, 136-37, 209-10, 216. Although Cleveland Pneumatic did not then receive a copy of RFP-7083, the firm learned in October and November that problems had been encountered in first article testing under the 1986 contract as a result of defective specifications and thus assumed, but never confirmed with the agency, that the specification problems and resulting delays in other procurements would delay issuance of RFP-7083. CT at 66-69, 79-82, 101-03, 106, 109-11, 139-42. Cleveland Pneumatic contacted the buyer for the 1986 procurement several times between October 1987 and January 1988, learning that the specifications in another September 1987 procurement for a left-side wing skin (for which Cleveland Pneumatic had submitted a proposal) were going to be revised, but the firm did not inquire about RFP-7083. CT at 140-42.

When the solicitation was issued on October 1, copies were sent to 44 firms, including 29 firms that had responded in writing to the synopsis. Eleven offers were received by the November 20 closing date for receipt of proposals. Award was made to Pacific Aero on January 27. Cleveland Pneumatic first learned that the solicitation had been issued when the announcement of the award appeared in the CBD on February 18. CT at 80-83. Cleveland Pneumatic thereupon filed this protest with our Office.

STANDARD OF REVIEW

Under the Competition in Contracting Act (CICA) of 1984, agencies are required, when procuring property or services, to obtain full and open competition through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A) (Supp. IV 1986). "Full and open competition" is obtained when "all responsible sources are permitted to submit sealed bids or competitive proposals." 10 U.S.C. § 2302(3) and 41 U.S.C. § 403(7) (Supp. IV 1986). Accordingly, we give careful scrutiny to an allegation that a firm has not been provided an opportunity to compete for a particular contract. Keener Mfg. Co., B-225435, Feb. 24, 1987, 87-1 CPD ¶ 208. In this regard, we will consider that the agency has met its obligation if it can show that it made a diligent, good faith effort to comply with the statutory and regulatory requirements regarding notice and distribution of solicitation materials and it obtains reasonable prices. Rut's Moving & Delivery Services Inc., B-228406, Feb. 11, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 139. On the other hand, significant deficiencies on the part of the agency that contribute to a firm's failure to receive a solicitation may warrant sustaining a protest. See, e.g., Abel Converting Co., B-229065, Jan. 15, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 40 (failure to solicit incumbent contributed to lack of sufficient competition to assure reasonable prices); Catamount Construction, Inc., B-225498, Apr. 3, 1987, 87-1 CPD ¶ 374 (protester availed itself of every reasonable opportunity to obtain solicitation materials but agency, albeit inadvertently, failed to provide them).

ANALYSIS

While Cleveland Pneumatic made significant efforts to familiarize the agency with its qualifications and interest in wing skin procurements in general, we find that the Air Force met its obligation here in distributing RFP-7083 to potential offerors; the agency made a diligent, good faith effort to comply with the relevant statutory and regulatory requirements. In this regard, the Air Force synopsisized the procurement in the CBD, inviting all interested firms to request in writing a copy of the solicitation; the buyer drew up a source list of 15 firms, including the previous prime contractors for the wing skin component; and the agency distributed the solicitation to these 15 firms and to 29 other firms that requested copies in writing (in accordance with the synopsis instructions). Furthermore, 11 proposals were received and the agency awarded a fixed-price contract, at what it found to be a reasonable price, to the low-priced offeror. We note that we have previously found

the receipt of three offers to satisfy the full and open competition requirement so as to assure reasonable prices. Rut's Moving & Delivery Services, Inc., B-228406, supra.

At the same time, it appears that Cleveland Pneumatic did not avail itself of all opportunities to obtain a copy of RFP-7083. In this regard, although Cleveland Pneumatic was aware of the September 14 CBD synopsis of the procurement, it neither contacted the agency official listed in the synopsis nor requested a copy of the solicitation in writing as instructed by the synopsis. CT at 104, 163-64. Instead, Cleveland Pneumatic relied on being included on the Mechanized Bidders List, and contacted the buyer on an earlier procurement for information on RFP-7083. CT at 136-37.^{1/} While the firm assumed that problems in the specifications for other F-15 wing skin procurements would delay the issuance of RFP-7083, the firm should have confirmed this assumption with contracting officials. CT at 66-69, 79-82, 101-03, 106, 109-11, 139-42.

Cleveland argues that it was in effect a "previously successful bidder," which the agency was required to solicit under FAR § 14.205-4(b) (FAC 84-5) ("whenever a [solicitation mailing] list is rotated, bids shall be solicited from . . . the previously successful bidder"), because it has indirectly supplied F-15 wing skins as a subcontractor to McDonnell-Douglas, the prime contractor for the F-15. This expansive reading of the provision is not warranted by the provision's language; Cleveland Pneumatic is not the prior successful bidder and, in fact, has never had a prime contract with the government to supply this or any other F-15 wing skin component. CT at 18-20, 108-09. The Air Force thus had no obligation to solicit the firm as a prior successful bidder.

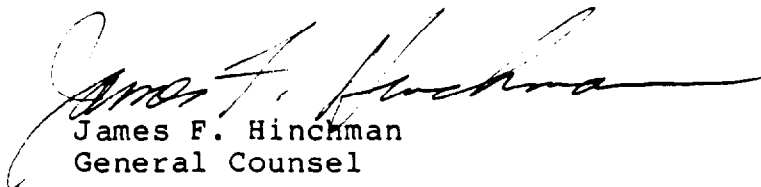
Finally, the record provides no basis upon which to conclude that the agency's failure to provide Cleveland Pneumatic with a copy of RFP-7083 was the result of a conscious and deliberate agency effort to exclude the firm from competing. In fact, Cleveland Pneumatic does not contend that agency

^{1/} Further, Robins' "Bidders List Catalog," which was sent to and received by Cleveland Pneumatic's headquarters, expressly warned potential offerors that the bidders list was used only on a rotated basis and that they should request in writing a copy of any specific solicitation that they wanted to be sure of receiving. CT at 117-19, 170-73.

officials acted purposely to exclude the firm and, moreover, has stated that the agency officials with whom it dealt most often acted in good faith and attempted to work closely with the firm in seeking to assure that it was solicited for procurements of F-15 wing skin components. CT at 75, 116, 155. The record does not show that the failure to solicit the firm was anything but inadvertent. CT at 210, 228, 235, 257-58, 268, 275.2/

In these circumstances, while it is unfortunate that Cleveland Pneumatic was not furnished a copy of the RFP, there is no requirement that the Air Force resolicit the requirement.

The protest is denied.



James F. Hinchman
General Counsel

2/ Cleveland Pneumatic cites our decision in Valistar International Corp., B-227905, Sept. 16, 1987, 87-2 CPD ¶ 259, for the proposition that in some instances significant deficiencies in procurement procedures can amount to a conscious and deliberate denial of an opportunity to compete. As already discussed, we have found no such deficiencies here.